IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1953 of 2002

B. Muthukumar .. Petitioner/Accused

Vs.

Krishnarajan .. Respondent/Complaint

Prayer:

This Criminal Revision has been filed under Section 397 and 401 of Crl.P.C preferred against Order dated 27.09.2002 made in C.A. No.181 of 2001 on the file of the First Additional District and Sessions Court cum Chief Judicial Magistrate, Salem confirming the conviction imposed in the Judgment dated 04.09.2001 made in LC.No.191 of 1998 on the file of the learned Judicial Magistrate No.III Salem.

For Appellant : Mr.N. Manoharan

For Respondent : Mr.K. Selvaraj

JUDGMENT

This revision has been preferred against the judgment in C.A. No.181 of 2001 on the file of the First Additional District and Sessions Court cum Chief Judicial Magistrate, Salem. The said appeal has been preferred against the judgment in C.C.No.191 of 1998 on the file of the Court of Judicial Magistrate No.III, Salem. The accused in C.C.No. 191/98, who has lost his case before the first appellate court is the revision petitioner herein.

2. The complainant/respondent has preferred a private complaint under section 200 Cr.P.C against the accused for an offence under section 138 of the Negotiable Instruments Act on the basis of a cheque dated 01.12.1997 drawn by the accused for Rs.40,000/- (Rupees forty thousand) only. When the said cheque was presented before the Catholican Syrian Bank, the same was returned on 11.02.1998 with an endorsement that there is no sufficient funds in the account of the accused. The statutory notice was issued by

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the complainant on 24.02.1998. The said notice was received by the accused on 2.3.1998. The accused has sent a reply notice but did not take any steps to repay the debt amount.

3. On appearance of the accused on summons copies under section 207 were furnished to the accused and when the offence was explained to the accused he pleaded not guilty.

4. On the side of the complainant PW.1 to PW.3 were examined and Ex.P1 to Ex.P7were exhibited and MO.1 to MO.4 were marked.

5. PW.1 is the complaint Krishnaraj. In his evidence, he has deposed that he is indulged in selling dyes. The accused who is running a shop by name 'Rajaganapathi Dyers' had placed orders for purchasing dyes from the complainant. In the said transaction, a sum of Rs.1,09,357.35p (One lakh nine thousand three hundred and fifty seven rupees and thirty five paise) only was the amount due to the complainant. In partial discharge of the said debt, the accused had drawn a cheque for Rs.40,000/- (Rupees forty thousand) only on 1.12.1997 and when the cheque was presented for realisation, the same was dishonoured by Catholican Syrian Bank on 11.2.1998 on the ground that there is no sufficient funds in the account of the accused. A notice was issued by the complainant on 24.02.1998 to the accused informing about the dishonouring of the cheque issued by him. The said notice was received by the accused on 2.3.1998.

6. PW.2 is the Branch Manager of Catholican Syrian Bank, Bhavani Branch, who has deposed that the accused is having a current account in their bank and the cheque Ex.P1 was drawn by the accused on 1.12.1997 and the said cheque was forwarded by Indian Bank for collection on 7.2.1998 to the Syrian Catholican Bank, Bhavani Branch. But the said cheque was returned with an endorsement that there is no sufficient funds in the account of the accused, since he was having only Rs.1,050/- towards the credit in his account on the date of dishonouring of cheque.

7. PW.3 is an employee of Union Bank, Shevapet Branch. According to PW.3, Ex.P1 cheque was presented by the complainant for collection in Indian Bank, Bhavani Branch, which was forwarded to Catholican Syrian Bank, Bhavani Branch, for collection, which was returned on the ground that there is no sufficient funds in the account of the accused. Ex.P2 is the memo issued by the Catholican Syrian Bank, Bhavani Brach while dishonouring the cheque. Ex.P3 is the debit advice sent along with Ex.P1 Cheque at the time of return. Ex.P4 is the copy of the notice sent by the complainant. Ex.P5 is the acknowledgment. Ex.P6 is the reply notice sent by the accused. Ex.P7 is the statement of accounts.

8. When the incriminating circumstances were put to the accused under section 313 Cr.P.C, he denied his complecity with the crime.

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9. After going through the oral and documentary evidence let in before the trial Court, the learned trial Judge has held that the guilt under section 138 of Negotiable Instruments Act has been proved beyond any reasonable doubt and accordingly he has convicted and sentenced the accused to undergo six months S.I and a compensation of Rs.20,000/- (Rupees twenty thousand) only with default sentence. Aggrieved by the findings of the learned Trial Judge, the accused preferred an appeal in C.A.No. 181 of 2002 before the First Additional District and Sessions Court cum Chief Judicial Magistrate, Salem.

10. The learned first Appellate Court after scanning the evidence and after due deliberation, on hearing both sides has confirmed the findings of the learned trial Judge thereby dismissing the appeal, which necessitated the accused to prefer this revision.

11. When the revision was taken up, it was represented on behalf of the accused that the accused had already deposited Rs.20,000/- (Rupees twenty thousand) only before the trial court towards compensation. The learned counsel for the respondent would contend that eventhough the cheque amount is Rs.40,000/- (Rupees forty thousand) only, the amount due from the accused in the transaction which took place between the complainant and the accused comes to Rs.1,09,357.35p (One lakh nine thousand three hundred and fifty seven rupees and thirty five paise) only. In this regard, the findings of the Hon'ble Apex Court in "2004 (2) Supreme Court Cases 235, Goa Plast (P) Ltd., appellant ..vs.. Chico Ursala D'souza .. respondent" is relevant to be mentioned. In that case also a cheque for Rs.40,000/- (Rupees forty thousand) only was dishonoured, the trial court namely Judicial Magistrate-I class had acquitted the accused holding that the complainant had failed to prove the liability. Aggrieved by the said order, the appellant preferred an appeal in Crl.A.No.37 of 1995 to the High Court of Judicature, Bombay, which also dismissed the appeal holding that the appellant/complainant had failed to prove the liability on the part of the respondent to pay the sum in question. Hence, the appellant had preferred an appeal before the Hon'ble Apex Court. While reversing the findings of the trial Court as well as the High Court, the Hon'ble Apex Court on the materials available before the court has held that an offence under section 138 of the Negotiable Instruments Act has been proved against the accused and the Hon'ble Apex Court held that the accused is liable for punishment under section 138 of Negotiable Instruments Act and sentenced him to pay a sum of Rs.80,000/- (Rupees eighty thousand) only (twice the amount of the cheque) given a months time for payment, instead of imposing any imprisonment. So, following the above dictum, I am also of the opinion that instead of awarding imprisonment by way of sentence, the sentence can be modified in the above lines as held in "2004 (2) Supreme Court Cases 235" by the Hon'ble Apex Court.

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12. In fine, the conviction by the Courts below is confirmed. But the sentence alone is modified and the accused is directed to pay Rs.80,000/- (Rupees eighty thousand) only (twice the cheque amount) towards compensation instead of six months simple imprisonment and a fine of Rs.20,000/- (Rupees twenty thousand) only. The accused is directed to pay the above said compensation before the trial court within two months from this date. The learned counsel for the revision petitioner Thiru.Manoharan has produced a receipt dated 04.09.2001 to show that he has deposited Rs.20,000/- (Rupees twenty thousand) only to the credit of C.C.No.191 of 1998 on the file of Judicial Magistrate No.III, Salem. The said amount of deposit of Rs.20,000/- (Rupees twenty thousand) only is to be given credit to while depositing the compensation amount (ie.,) the accused has to deposit only Rs.60,000/- (Rupees sixty thousand) only.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

mra

To,

1. The First Additional District Sessions Court
cum Chief Judicial Magistrate, Salem.

2. The Judicial Magistrate No.III,
Salem.

1 cc To Mr.K.Selvaraj, Advocate, SR.22223.
1 cc To Mr.N.Manokaran, Advocate, SR.22476.

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MS(CO)
RVL 17.04.2007

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